

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EDVIN RUSIS, HENRY GERRITS, PHIL
MCGONEGAL, and DAVID HO ENG,
individually and on behalf of all other similarly
situated individuals,

Plaintiffs,

v.

INTERNATIONAL BUSINESS MACHINES
CORP.

Defendant.

1:18-cv-08434 (DAB)

DECLARATION OF DIANE KENNEDY

I, Diane Kennedy, declare as follows:

1. I have been employed by International Business Machines Corporation (“IBM”) since 2000. My current position is Manager, NA Workforce Restructuring – SME Lifecycle Program Delivery. I took this role in approximately June 2018.

2. I make this statement based on my personal knowledge and based on my familiarity with and personal review of IBM’s business records. If called as a witness, I could and would competently testify to the facts contained here.

3. I am 56 years old and am otherwise competent to make this declaration.

4. As Manager of NA Workforce Restructuring, I am the manager of a team that is responsible for, among other things, assisting IBM business units in North America in executing resource actions, or reductions in force. As part of this function, my team develops and disseminates guidance and tools for managers to use in making selection decisions, conducts

training for managers on selection decision-making and notification processes, and maintains records and data on the individuals selected for separation in a resource action.

5. We train the managers who will be making selection decisions in a resource action first on the process for defining the job groups to be used in the selection decision process. In defining job groups, managers are to include in a single job group employees who have interchangeable skills or employees whose work or position may be eliminated due to the particular work or position going away.

6. We also train the managers that, once the job groups have been defined, they are to choose an appropriate selection methodology for each group. Since 2018, managers have had three different selection methodologies to choose among to make their selection decisions: staff reduction, work elimination, or position elimination. Managers are to decide which methodology to use based on what is happening with the work, individual, or job group at issue.

7. We train managers to use the staff reduction methodology when a manager needs to reduce the number of positions or jobs in an organization and intends to spread out the work performed by the vacating employee among the remaining employees on the manager's team. In a staff reduction, managers generally decide who should be selected for layoff based on an assessment of the employee's skills and performance relative to others in his or her job group.

8. We train managers to use the work elimination methodology when 80% or more of the work will no longer be performed by the current IBM employee or employees in a specific location or site, organization, job group, or project. This methodology is used when the work is moving to another IBM location or business unit or when the work will be eliminated entirely and no longer performed by IBM.

9. The position elimination methodology is to be used when a single position or job is eliminated and more than 5% of the work is being absorbed by other employees in the same organization affected by the resource action.

10. Managers are also trained that any positions that are vacated by employees selected in a resource action should not be backfilled for at least 90 days.

11. Since July 2017, there have been more than 65 different resource actions within IBM in the United States. Hundreds of different managers have made selection decisions in these resource actions.

12. Different selection methodologies have been used for different job groups within the resource actions that have taken place since July 2017. For example, within the SETG resource action in 2017, there were 8 employees selected using the position elimination methodology, 19 employees selected using the staff reduction methodology, and 1 employee selected using the work elimination methodology.

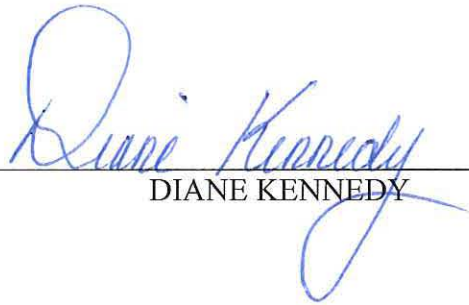
13. Employees selected for separation in a resource action are offered a severance payment in exchange for signing a separation agreement. If an employee who has been selected in a resource action does not sign a separation agreement, that employee will not receive a severance payment.

14. In my role as Manager of NA Restructuring, I am familiar with the separation agreements that were provided to employees who were selected as part of resource actions in 2017 and 2018. The form of separation agreement that was provided to employees selected in a resource action from July to October 2017 is attached as Exhibit A to this declaration. The form of separation agreement that was provided to employees selected in a resource action from October 2017 to January 2018 is attached as Exhibit B to this declaration. The form of

separation agreement that was provided to employees selected in a resource action from January 2018 to November 2018 is attached as Exhibit C to this declaration. The form of separation agreement that was provided to employees selected in a resource action from November 2018 to the present is attached as Exhibit D to this declaration.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 28, 2019



DIANE KENNEDY